



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael P. Connelly

Examiner: Adetokunbo O. Torimiro

Serial No.: 10/764,740

Group Art Unit: 3714

Filed: January 26, 2004

Docket: 1842.013US1

For: GAMING DEVICE HAVING CONTINUOUS RHYTHM REEL SOUND

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**APPEAL BRIEF UNDER 37 CFR § 41.37**

Mail Stop Appeal Brief- Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Appeal Brief is presented in response to the Notice of Panel Decision from Pre-Appeal Brief Review mailed on January 11, 2008 and further in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on November 19, 2007, from the Final Rejection of claims 1-22 of the above-identified application, as set forth in the Final Office Action mailed on June 18, 2007.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of \$510.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of pending claims.

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## **1. REAL PARTY IN INTEREST**

The real party in interest of the above-captioned patent application is the assignee, WMS GAMING INC.

## **2. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in the present appeal.

### **3. STATUS OF THE CLAIMS**

The present application was filed on January 26, 2004 with claims 1-20. Claims 20 and 22 were added in response to a non-final Office Action in an Amendment and Response dated March 14, 2007. A Final Office Action was mailed June 18, 2007. Claims 1-22 stand twice rejected, remain pending, and are the subject of the present Appeal.

#### **4. STATUS OF AMENDMENTS**

Sample Language - No amendments have been made subsequent to the Final Office  
Action dated June 18, 2007.

## **5. SUMMARY OF CLAIMED SUBJECT MATTER**

Some embodiments of the invention are directed to a computerized reel slot gaming system that includes an audio module that is operable to play an audio track during reel spins, while maintaining audio track rhythm over multiple reel spins.

Independent claim one recites a computerized gaming system, comprising a gaming module, comprising a processor and gaming code which is operable when executed on the processor to conduct a reel slot machine wagering game on which monetary value can be wagered (see Fig. 1; p. 3, ln 10 – p. 4, ln. 7), and an audio module that is operable to play an audio track during reel spins, the audio module further operable to maintain audio track rhythm over multiple reel spins (see p. 4, ln. 8-25).

Independent claim nine recites a method of operating a computerized gaming system, comprising playing an audio track during reel spins of a reel slot machine game via an audio module, the audio module further operable to maintain audio track rhythm over multiple reel spins (see p. 4, ln. 8-25), and wherein the reel slot machine game comprises a game upon which monetary value can be wagered (see Fig. 1; p. 3, ln 10 – p. 4, ln. 7).

Independent claim 17 recites a computerized gaming system, comprising a gaming module, which comprises a processor and gaming code which is operable when executed on the processor to conduct a reel slot machine wagering game on which monetary value can be wagered (see Fig. 1; p. 3, ln 10 – p. 4, ln. 7), and an audio module, the audio module operable to play an audio track during reel spins at a louder volume level and to play the audio track at a quieter or muted volume level when the reels are not spinning, the audio module further operable to maintain audio track rhythm over multiple reel spins (see p. 4, ln. 8-25).

Independent claim 20 recites a machine-readable medium with instructions stored thereon, the instructions when executed operable to cause a computerized gaming system to conduct a reel slot machine wagering game upon which monetary value can be wagered (see Fig. 1; p. 3, ln 10 – p. 4, ln. 7); and to play an audio track during reel spins at a louder volume level and to play the audio track at a quieter or a muted volume level when the reels are not spinning, the instructions when executed further operable to maintain audio track rhythm over multiple reel spins (see p. 4, ln. 8-25).

Independent claim 21 recites a computerized gaming system, comprising a gaming module that comprising a processor and gaming code which is operable when executed on the processor to conduct a reel slot machine wagering game on which monetary value can be wagered (see Fig. 1; p. 3, ln 10 – p. 4, ln. 7); and an audio module, the audio module operable to play an audio track during reel spins, the audio module further operable to stop presentation of the audio track between reel spins while maintaining audio track rhythm over multiple reel spins (see p. 4, ln. 8-25).

Independent claim 22 recites a method of operating a computerized gaming system, comprising playing an audio track during reel spins of a reel slot machine game via an audio module that is operable to stop presentation of the audio track between reel spins while maintaining audio track rhythm over multiple reel spins (see p. 4, ln. 8-25); and wherein the reel slot machine game comprises a game upon which monetary value can be wagered (see Fig. 1; p. 3, ln 10 – p. 4, ln. 7).

## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

I. Claims 21 and 22 were rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate description or enablement.

II. Claims 1, 2, 4-10, 12-18 and 20 were rejected under 35 U.S.C. § 102(e) for anticipation by Hecht et al. (U.S. Publication No. 2003/0073491A1).

## **7. ARGUMENT**

### ***A) The Applicable Law under 35 U.S.C. §112, first paragraph***

As described in MPEP § 2164 et seq., the following represents the *prima facie* case that the Examiner must provide in order to maintain a rejection of nonenablement with respect to the disclosure of a patent application under 35 U.S.C. § 112, first paragraph:

1. a rational basis as to
  - a. why the disclosure does not teach, or
  - b. why to doubt the objective truth of the statements in the disclosure that purport to teach;
2. the manner and process of making and using the invention;
3. that correspond in scope to the claimed invention;
4. to one of ordinary skill in the pertinent technology;
5. without undue experimentation; and
6. dealing with subject matter that would not already be known to the skilled person as of the filing date of the application.

### ***B) Discussion of the rejection of claims 21 and 22 under 35 U.S.C. § 112, first paragraph, as lacking adequate description or enablement.***

Claims 21 and 22 were rejected under 35 U.S.C. § 112, first paragraph, arguing that the specification is not enabling. Applicant respectfully traverses these grounds for rejection. Because the Examiner has not provided evidence supporting each of these elements, the Examiner has not made out a *prima facie* case for nonenablement under 35 U.S.C. § 112, first paragraph.

Further, Applicant respectfully points out that claims 21 and 22 are supported by the specification as originally filed. The Examiner's understanding of the claim meaning is

essentially correct, and this meaning is supported by the specification such as at p. 4, ln. 9-11, which describe continuous play of a track along with fading in and out to maintain track rhythm between reel spins. A more detailed example is given on p. 4, ln. 19-25, including fading to very quiet levels or fading out completely while the track continues to play inaudibly.

***C) The Applicable Law under 35 U.S.C. §102(b)***

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. M.P.E.P § 2131. To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter. PPG Industries, Inc. V. Guardian Industries Corp., 75 F.3d 1558, 37 USPQ2d 1618 (Fed. Cir. 1996). The identical invention must be shown in as complete detail as is contained in the claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

***D) Claims 1, 2, 4-10, 12-18 and 20 were rejected under 35 U.S.C. § 102(e) for anticipation by Hecht et al. (U.S. Publication No. 2003/0073491A1).***

Applicant respectfully submits that the claim limitation of maintaining continuous audio rhythm over multiple reel spins for a reel spin sound has not been shown to be present in the cited reference.

More specifically, Hecht does not teach maintaining the rhythm of a wheel spin audio track over multiple wheel spins, such as by playing the track continuously and selectively muting the track between wheel spins, but teaches only generally the playing of a wheel spin audio track during wheel spin.

The final Office Action argues on p. 11, section 10, that Hecht teaches such a feature in paragraph 80. The cited paragraph 80 recites “gaming device 10...continues to play the same sound file throughout the remainder of the random number generation display, as indicated by block 130”. The Office Action further states that the Examiner interprets this as meaning that

the sound is played as long as reels are still displayed. The description in Hecht is provided with reference to element 130 of the flowchart of Figure 5, which illustrates how a random generation display, also called a wheel spin (see, e.g. paragraph 84, first sentence), begins each time after a player selects the spin button at 122, and does not continue between wheel spins.

The term “the random number generation display” is defined in the specification in several places in a manner that does not allow for the broad “interpretation” taken in the Office Action. As stated in the cited portion of paragraph 80, the flowchart of Figure 5 shows at element 130 that the sound played throughout the remainder of the random number generation display is played only between determination of a win for a particular reel spin at 126 and credit roll-up at 132. If the player elects to spin the wheels again at 134, a random outcome for another reel spin is determined “WHILE BEGINNING RANDOM GENERATION DISPLAY” at 124. That is, each reel spin results in a new beginning of the random generation display according to Figure 5.

This is supported by paragraph 83, which states that:

*If the player plays again as determined in connection with diamond 134, gaming device 10 randomly determines the player's outcome while beginning the play of a sound file as indicated by block 124. (emphasis added)*

This language clearly indicates that each time a player plays again or initiates another reel spin (as selected at 134 of Figure 5), playing of the reel spin sound file begins anew at block 124 in conjunction with the beginning of the random generation display recited in the text block at 124.

Also, in paragraph 84's further discussion of Figure 5, the first sentence recites “...the sound file resets to the original condition or level after each random generation or spin of the reels”, further evidencing that each reel spin is an independent random generation.

In summary, the cited reference fails to teach the claimed “audio module further operable to maintain audio track rhythm over multiple reel spins”, and so fails to anticipate any of the pending claims. Reversal of the rejection and allowance of the pending claims 1-22 is therefore respectfully requested.

**SUMMARY**

For the reasons argued above, the pending claims were not properly rejected under § 112, first paragraph, or §102(b) as being unpatentable over Hecht.

It is respectfully submitted that the art cited does not render the claim anticipated and that the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claim are respectfully requested.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402

Date

Mar. 11 08

By



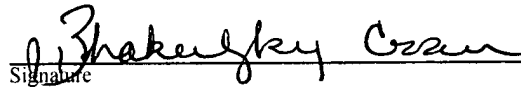
John M. Dahl

Reg. No. 44,639

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Appeal Brief, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 11 day of March 2008.

Zharabeky M. Carrion

Name

  
Signature

## **8. CLAIMS APPENDIX**

1. A computerized gaming system, comprising:

a gaming module, comprising a processor and gaming code which is operable when executed on the processor to conduct a reel slot machine wagering game on which monetary value can be wagered; and

an audio module, the audio module operable to play an audio track during reel spins, the audio module further operable to maintain audio track rhythm over multiple reel spins.

2. The computerized gaming system of claim 1, wherein the audio module is operable to maintain audio track rhythm over multiple reel spins by playing a track continuously and by further fading in the track in conjunction with a spinning reel and by fading out the track in conjunction with a stopped reel.

3. The computerized gaming system of claim 2, wherein the audio module is further operable to loop play the continuous track such that rhythm of the track is maintained.

4. The computerized gaming system of claim 1, wherein the audio module is operable to maintain audio track rhythm over multiple reel spins by playing the track from a point calculated to maintain rhythm from a previous reel spin upon initiation of reel spin.

5. The computerized gaming system of claim 1, wherein the reels are video representations of reels on a video slot machine.

6. The computerized gaming system of claim 1, wherein the reels are mechanical reels under the control of the computerized gaming system.

7. The computerized gaming system of claim 1, wherein the audio module is operable to maintain audio track rhythm over multiple reel spins by playing a track continuously and by further fading in the track in conjunction with a spinning reel and by fading the track to a reduced volume in conjunction with a stopped reel.

8. The computerized gaming system of claim 1, wherein the audio module is further operable to play at least one additional audio track in rhythm with the audio track played during reel spin.

9. A method of operating a computerized gaming system, comprising:

playing an audio track during reel spins of a reel slot machine game via an audio module, the audio module further operable to maintain audio track rhythm over multiple reel spins, and wherein the reel slot machine game comprises a game upon which monetary value can be wagered.

10. The method of claim 9, wherein the audio module is operable to maintain audio track rhythm over multiple reel spins by playing a track continuously and by further fading in the track in conjunction with a spinning reel and by fading out the track in conjunction with a stopped reel.

11. The method of claim 10, wherein the audio module is further operable to loop play the continuous track such that rhythm of the track is maintained.

12. The method of claim 9, wherein the audio module is operable to maintain audio track rhythm over multiple reel spins by playing the track from a point calculated to maintain rhythm from a previous reel spin upon initiation of reel spin.

13. The method of claim 9, wherein the reels are video representations of reels on a video slot machine.

14. The method of claim 9, wherein the reels are mechanical reels under the control of the computerized gaming system.

15. The method of claim 9, wherein the audio module is operable to maintain audio track rhythm over multiple reel spins by playing a track continuously and by further fading in the track in conjunction with a spinning reel and by fading the track to a reduced volume in conjunction with a stopped reel.

16. The method of claim 9, wherein the audio module is further operable to play at least one additional audio track in rhythm with the audio track played during reel spin.

17. A computerized gaming system, comprising:

a gaming module, comprising a processor and gaming code which is operable when executed on the processor to conduct a reel slot machine wagering game on which monetary value can be wagered; and

an audio module, the audio module operable to play an audio track during reel spins at a louder volume level and to play the audio track at a quieter or muted volume level when the reels are not spinning, the audio module further operable to maintain audio track rhythm over multiple reel spins.

18. The computerized gaming system of claim 17, wherein the audio track comprises multiple audio element tracks, and wherein only select audio element tracks are played on each reel spin.

19. The computerized gaming system of claim 18, wherein at least one of the selected audio element tracks played on each reel spin is randomly selected for each reel spin.

20. A machine-readable medium with instructions stored thereon, the instructions when executed operable to cause a computerized gaming system to:

conduct a reel slot machine wagering game upon which monetary value can be wagered; and

play an audio track during reel spins at a louder volume level and to play the audio track at a quieter or a muted volume level when the reels are not spinning, the instructions when executed further operable to maintain audio track rhythm over multiple reel spins.

21. A computerized gaming system, comprising:

a gaming module, comprising a processor and gaming code which is operable when executed on the processor to conduct a reel slot machine wagering game on which monetary value can be wagered; and

an audio module, the audio module operable to play an audio track during reel spins, the audio module further operable to stop presentation of the audio track between reel spins while maintaining audio track rhythm over multiple reel spins.

22. A method of operating a computerized gaming system, comprising:

playing an audio track during reel spins of a reel slot machine game via an audio module, the audio module further operable to stop presentation of the audio track between reel spins while maintain audio track rhythm over multiple reel spins, and wherein the reel slot machine game comprises a game upon which monetary value can be wagered.

## **9. EVIDENCE APPENDIX**

None.

## **10. RELATED PROCEEDINGS APPENDIX**

None.



**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

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